

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE HART and AMANDA)
PARKE, on behalf of)
themselves and all)
others similarly)
situated,) Case No.
) 1:15-cv-04804 (WHP)
Plaintiff,)
)
vs.)
)
BHH, LLC d/b/a Bell +)
Howell and Van Hauser)
LLC,)
)
Defendants.)

The deposition of STEFAN BOEDEKER, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before JENNIFER M. DALY, a certified shorthand reporter within and for the County of Cook and State of Illinois, at 33 West Monroe Street, Suite 1100, Chicago, Illinois, on the 26th day of January, 2018, at the hour of 9:33 a.m.

REPORTED BY: JENNIFER M. DALY, CRR, RPR, CSR, CCR
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1 chance to talk to him to give him instructions
2 exactly what is missing, then he can, hopefully,
3 clear that up in a short amount of time.

4 Q. Well, obviously, these were key documents
5 to your opinions here, but it is best to move on and 10:06:29AM
6 get done what we can in the meantime.

7 Mr. Boedeker, is your understanding that
8 you're serving as a rebuttal witness in this case?

9 A. That is my understanding, yes.

10 Q. And you are rebutting the testimony of 10:07:05AM
11 Mr. Colin Weir; is that right?

12 A. That is correct. I mean, so far, I've
13 only been asked to review his report, analyze his
14 reporting and the underlying data, and then also
15 attend his deposition telephonically. 10:07:24AM

16 Q. And other than opinions that would rebut
17 any of the testimony of Mr. Weir, you're not
18 offering any testimony in this case; is that
19 correct?

20 A. It is, basically, the opinions in my 10:07:35AM
21 report, and, again, I attended his deposition and
22 have not memorialized any new opinions about that,
23 but his deposition testimony is something that I --
24 if I were asked about, would also maybe use to
25 formulate additional opinions. 10:07:54AM

1 about the effectiveness of the products at issue in
2 this case?

3 A. I -- I don't know exactly who was
4 retained by the -- by the plaintiffs.

5 Q. Okay. Are you rebutting any testimony by 10:11:43AM
6 experts about the effectiveness of the products at
7 issue?

8 A. That would be outside my expertise. I'm
9 not a biologist or a pest control expert, so -- or a
10 technical expert about the product itself, so I 10:12:01AM
11 would not be testifying about that.

12 Q. You're not offering any testimony about
13 the efficacy of the products at issue in this case,
14 right?

15 A. Not about the efficacy itself, but I 10:12:12AM
16 reviewed defense witnesses analysis of experimental
17 data, and the only opinion that I offered there is
18 with respect to the proper use of statistical
19 methodology to analyze test data, but not about what
20 the test data mean by itself. But I looked at the 10:12:33AM
21 statistical results and came to the conclusion that
22 the data were analyzed properly from a statistical
23 point of view, but I don't testify about the
24 efficacy of the product, only what the proper use of
25 statistics analyzing test results because that would 10:12:48AM

1 be my expertise.

2 Q. Did Mr. Weir provide any opinions on
3 that?

4 A. Mr. Weir -- I wouldn't call it opinion
5 because that was his starting assumption, right. 10:12:59AM
6 His starting assumption, he wrote that in his
7 report, but also testified at his deposition that
8 he -- his entire work is based on the assumption of
9 a total worthlessness of the product. I wouldn't
10 call it an opinion, but I think that's his starting 10:13:17AM
11 assumption to do his calculations.

12 Q. So you take issue with Mr. Weir's
13 starting assumption about the effectiveness of the
14 products?

15 A. I mean, I'm not taking issue with him 10:13:30AM
16 making a starting assumption. Experts are quite
17 frequently asked to calculate certain scenarios
18 under certain assumptions. Along the way, there
19 just have been data and information that -- that
20 would give some reason to the contrary, right, that 10:13:50AM
21 the hundred percent worthlessness assumption might
22 not be correct, but I did not see Mr. Weir changing
23 the cause of his work because of that, that
24 additional data information that was available.

25 Q. Now, Mr. Boedeker, you're not an expert 10:14:08AM

1 called an indicator variable. An indicator variable
2 ultimately takes the value one, if that particular
3 product had that particular feature, and it takes
4 the value zero when it doesn't.

5 And then, ultimately, here, I'm now going 01:49:18PM
6 -- creating a regression data set. The regression
7 data set is the goal of the regression is to see if
8 different product features cause the price to
9 change, and in regression, in general, there's a set
10 of input variables that are used to explain the 01:49:34PM
11 variation in what's called the dependent variable.

12 In this case, I modeled the price of a
13 product dependent on the features the product has,
14 and that's the methodology that Mr. Weir describes
15 in his report as hedonic regression, and the 01:49:53PM
16 analysis where the overall price of a product is
17 viewed as the weighted average of its components,
18 features, whatever you want to call those, smaller
19 units that a product is comprised of.

20 Here this stuff here -- I'm a mouse guy. 01:50:12PM
21 My computer has a touch pad. I never use it.

22 Q. Press here.

23 A. I'm leaning on it.

24 This is just formatting.

25 At some point, it runs the regression. 01:50:23PM

1 information. It has the SKU numbers and item
2 numbers.

3 And then more towards the right columns,
4 there is a grid with -- basically, feature attribute
5 designations, and then below, for each product, 01:58:18PM
6 there is an X when that product had that feature, or
7 it's left blank when that product didn't have that
8 feature.

9 Q. Okay. And -- sorry, just to be clear,
10 right now we're looking at the SKU tab, just that 01:58:34PM
11 one tab --

12 A. Mm-hmm.

13 Q. -- within that document, correct?

14 A. Yeah.

15 Q. Okay. Was this the input for the 01:58:40PM
16 regression analysis that you conducted?

17 A. This was the input, as I said, that's
18 being transferred. In particular, the Xs and blanks
19 are transferred into indicator variables, and then
20 these data were used to -- technically, the term is 01:58:57PM
21 to regress the price on -- of these particular
22 characteristics, or features, of the product.

23 Q. Okay. And so in this SKU tab with the
24 input for your regression analysis, what retail
25 sales data did you include? 01:59:14PM

1 A. This was actually a file that I received
2 from counsel where they have gone through and looked
3 at the different features that the products have.

4	Right now, I have to see if this is a	
5	national overall number.	01:59:38PM

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6         This whole exercise I did was to assess
7         if features -- different features may impact price.
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8 This was, basically, all the products. I
9 mean, the total sum of units sold is 2.7 million, so
10 I assume that's probably the national sales for all 01:59:57PM
11 the products where the information for the -- for
12 the different characteristics was available.

13	Q. Sorry, what was the 2.7 million number?
----	--

14 A. Looked at the total. It looked like that

15 there were about 2.7 million sold. 02:00:14PM

16 Q. That's -- is that units?

17 A. Yeah, units sold, so 2.7 -- or
18 2.7 million.

19	Q. Is there any retail pricing data in that	
20	SKU tab that we're looking at?	02:00:28PM

21 A. This particular tab has wholesale prices
22 in it.

23 Q. Okay. So the further regression analysis
24 used wholesale prices?

25	A. Yeah, I used the prices in this data set	02:00:38PM
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1 to, basically, see if Mr. Weir's assessment that
2 features don't change prices could be refuted, and
3 so I took the prices here, the wholesale prices that
4 were in the data set.

5 Q. Right. Most consumers, they don't pay 02:00:57PM
6 the wholesale price, they pay a retail price, which
7 is different, right?

8 A. The retail price, overall, would be
9 different. The wholesale price is, obviously, a
10 determining factor, one of the determining factors 02:01:10PM
11 for the retail price. So here I, basically,
12 followed Mr. Weir's example of using the whole
13 price -- wholesale price data set that were
14 available, and, again, this is just to demonstrate
15 that Mr. Weir's method of eyeballing, looking at 02:01:27PM
16 data and not seeing differences, is just incorrect.
17 So I used the data, again, to show at the wholesale
18 level, certain features do have an impact on the
19 price of the product.

20 Q. Are you aware of any consumers paying the 02:01:42PM
21 wholesale price for the products at issue in this
22 case?

23 A. I think I testified earlier that I -- I
24 have not seen a single transaction data point. So
25 all the data that we're -- that were available here 02:01:55PM

1 that Mr. Weir had in his reliance materials, and
2 that's what I used.

3 And it came out to be -- he has 24.80 and
4 24.10, I believe, in his calculations.

5 Q. So it's your understanding that the 02:18:00PM
6 retail sales data that you've relied on in this tab
7 is the only data that Mr. Weir relied on --

8 MR. WING: Object to form. Calls for
9 speculation.

10 BY MR. ARISOHN: 02:18:12PM

11 Q. -- for calculating his averages?

12 A. The 24.80 and the 24.10, I mean, they
13 were hard coded in some of the spreadsheets, so I
14 don't know what he used.

15 These are the data that -- these are his 02:18:23PM
16 data, right? So I'm using his data, and I'm
17 calculating two average data points, and they're
18 different from what he had.

19 Q. So it's your understanding that he didn't
20 rely on any other data in calculating his averages, 02:18:35PM
21 right?

22 MR. WING: Object to the form.

23 THE WITNESS: I don't know. This is the
24 data that I worked with, so I don't know what other
25 data he worked with that were not documented, but I 02:18:44PM

1 used this data that he provided, and I came up with
2 two different numbers.

3 BY MR. ARISOHN:

4 Q. Okay. The next tab there, I think it's
5 called U.S. sales; is that right? 02:18:57PM

6 A. Yeah, U.S. sales.

7 Q. Okay. And can I just see that for a
8 moment, please?

9 A. Yeah, I'm still in the first tab.

10 Q. Okay. I brought up the tab U.S. sales. 02:19:19PM
11 We're still in Exhibit 3 of the documents that you
12 sent earlier.

13 Are you familiar with that tab, U.S.
14 sales?

15 A. Yeah, this is now the tab that, 02:20:02PM
16 basically, has the products with information and the
17 products for which an average was -- was used.

18 Q. Okay. And so this looks somewhat similar
19 to Mr. Weir's report. Where do I have that?

20 A. Is it Boedeker 2? 02:20:32PM

21 Q. Yes, Boedeker 2. It looks similar to
22 Table 1, which is on Page 6, right?

23 A. Yeah, that seems to be the -- I'm just
24 checking the first couple of rows.

25 It's only -- a price ID is a different 02:20:53PM

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1 Q. And here the statistical -- strike that.

2 Here, the impact of the safety cover
3 feature, well, it's negative, right?

4 A. That's correct, yes.

5 Q. Because it's in parentheses, that means 03:08:31PM
6 negative?

7 A. Yeah, this is the notation where I didn't
8 put a minus sign, I put the parentheses.

9 Q. So it's in parentheses, and it says,
10 0.087, right? 03:08:44PM

11 A. That's correct.

12 Q. So can I use that estimate number of
13 negative 0.087 to figure out the price differential
14 for products that have the safety cover feature,
15 and, if so, how would I do that? 03:08:57PM

16 A. Yeah, this is a log-linear model, so now
17 to get that back to -- to a real dollar price, we
18 would have to run it through the exponential
19 function, and then there would be a dollar price.

20 Q. Is there a formula that -- 03:09:12PM

21 A. Yeah, this is the -- this is -- I have to
22 see. I think I used the natural logarithm, not the
23 logarithm to the base ten. Whatever the logarithm
24 is, you have to use the same exponential one, right?

25 So assume it's the natural logarithm, 03:09:32PM

1 are very similar, so the effect of that variable is
2 in both models is being rejected as being
3 statistically significant.

4 Q. So under your log-linear analysis and
5 your linear analysis, the magnetic feature has no 03:12:36PM
6 statistically significant impact on the sales price
7 of the product, right?

8 A. Yeah, for the data that I had analyzed,
9 that's correct.

10 Q. Okay. And still in Table 2, going to 03:12:50PM
11 MicroSize, the P value is 31.6 percent?

12 A. That's correct.

13 Q. And so that's not statistically
14 significant either?

15 A. That's correct. 03:13:01PM

16 Q. So under both the log-linear and the
17 linear analysis that you did, the MicroSize feature
18 has an impact that's not statistically significant
19 from zero on the price of the product?

20 A. That's correct. 03:13:18PM

21 Q. Okay. And the same for outlet in
22 Table 2, that's not statistically significant?

23 A. Yeah, 89.7 percent.

24 Q. Okay. So under both your log-linear and
25 your linear analysis, the outlet feature in the 03:13:31PM

1 products has an impact on price that's not
2 statistically different from zero; is that correct?

3 A. That's correct, yeah. That's the
4 correct -- yeah.

5 Q. Now, in Table 2, the safety cover has a 03:13:45PM
6 P value of 8.8 percent; is that correct?

7 A. That's correct.

8 Q. And that is statistically significant
9 because it's less than 10 percent?

10 A. That is correct. 03:13:56PM

11 Q. But the impact here is in parentheses,
12 and so it's negative?

13 A. Yeah, that means everything else being
14 equal, meaning the same product that only differs by
15 having a safety cover or not having a safety cover, 03:14:09PM
16 again, everything else being equal, lowers the
17 price, and that sometimes may seem counter
18 intuitive, but I have the example of bedrooms,
19 right, in a house. When you run a regression and
20 you have the variable, let's say lot size, square 03:14:26PM
21 footage of the house, bathroom, then you have
22 bedrooms in there, more bedrooms actually have a
23 negative coefficient, and that comes from the fact
24 that, everything else being equal, is very
25 important. So if I have a house that's 2,000 square 03:14:39PM

1 right? What I'm measuring is if somebody buys the
2 repeller, do they pay extra, or is there, like, more
3 money they pay if it has an LED nightlight?

4 So once the repeller is in place, there's
5 the additional functionality of having a nightlight. 03:29:34PM
6 That's what I'm measuring. I'm not asking the
7 question, Would you buy a nightlight that, by the
8 way, has a repeller attached to it? That's not the
9 question I'm asking, or answering.

10 Q. If the repeller part doesn't work, the 03:29:47PM
11 demand, essentially, goes to zero?

12 A. The demand for the repeller?

13 Q. Yeah.

14 A. That would have to be measured, yeah. I
15 mean, if... 03:29:56PM

16 Q. You would assume it would go to zero?

17 A. I -- I hate to make assumptions, right?
18 I'm measuring something, and then if it shows that
19 the demand curve drops such that the quantity sold
20 goes to zero, then I could conclude it, but I would 03:30:10PM
21 not assume it.

22 Q. Based on your common sense, there are
23 very, very few people who are going to go into a
24 store and pay \$20 for a repeller with a nightlight
25 that they know won't repel simply because it has a 03:30:21PM

1 nightlight, right?

2 A. Can you say that again? Sorry.

3 MR. ARISOHN: Can you repeat the question
4 for him.

5 (Requested record was read.) 03:30:47PM

6 THE WITNESS: Let's put it the other way,
7 if I'm going out to buy a nightlight, I'm probably
8 not going to buy a nightlight with a repeller
9 attached to it, if that answers your question --

10 MR. ARISOHN: Okay. 03:30:54PM

11 THE WITNESS: -- on the common sense,
12 yeah.

13 MR. ARISOHN: I have no further
14 questions.

15 MR. WING: Quick break? 03:31:01PM

16 THE VIDEOGRAPHER: The time is 3:33.
17 We're off the record.

18 (Short break was taken.)

19 THE VIDEOGRAPHER: The time is now
20 3:43 p.m. We're back on the record. 03:40:54PM

21 CROSS-EXAMINATION

22 BY MR. WING:

23 Q. Mr. Boedeker, I will just have a few
24 questions for you to clarify some of your testimony
25 today. 03:41:02PM

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